Supreme Court, U.S.
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IN THE

Supreme Court of the United States

VAUGHN H. BRUENN,

Petitioner,

v.

NORTHROP GRUMMAN CORPORATION, KENNETH MARKS, AND DOES 1-10,

Respondents

On Petition for a Writ of Certiorari to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

VAUGHN H. BRUENN
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Petitioner, in Propria persona

January 13, 2006

QUESTIONS PRESENTED

1. Whether a court violates the constitutional right to a fair, impartial and competent panel of jurors, guaranteed under the Seventh Amendment of the United States Constitution and Article I, Section 16 of the California Constitution, when it fails to investigate juror non-compliance with the fundamental legal prerequisite of English comprehension necessary to perform juror duties pursuant to the California *Code of Civil Procedure* ("C.C.P") § 203(a)(6)?[1]

2. Whether a court violates the clear mandate established through the creation of the Fair Employment and Housing Act ("FEHA") to combat medical disability employment discrimination when it improperly excludes relevant evidence offered to rebut an employer's alleged non-discriminatory reason for termination.

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[1] Section § 203 provides in pertinent part: "(a) All persons are eligible and qualified to be prospective trial jurors, except the following: (6) Persons who are not possessed of sufficient knowledge of the English language. . . ." *Code of Civil Procedure* ("C.C.P.") § 203.

PARTIES TO THE PROCEEDINGS BELOW

Vaughn H. Bruenn was Petitioner in the California Supreme Court. Northrop Grumman Corporation, Kenneth Marks and Does 1-10 were Respondents in the California Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Petitioner owns no stock nor has any interests in Respondent corporation, its affiliates and subsidiaries. Petitioner is not a corporation.

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Petitioner, Vaughn H. Bruenn (hereinafter "Bruenn"), respectfully requests that this court grant his petition for a writ of certiorari to review the denial of his petition for review by the California Supreme Court, affirming the decision and judgment of the Second Appellate Court of Appeal against Petitioner on issues of constitutional significance.

OPINIONS BELOW

The order of the California Supreme Court, denying the petition for review and declining to reach the merits of Vaughn Bruenn's appeal, contains no opinion and is unpublished. (Appendix ("App.") 1a). The order of the Court of Appeal of the State of California, Second Appellate District, Division Five, affirming the decision of the trial court against Petitioner and in favor of Respondents relative to Petitioner's employment discrimination claim for damages arising from violation of the Fair Employment and Housing Act, Government Code section 12920, *et seq.* (hereinafter "FEHA"), is unpublished. (App. 2a-24a). The appellate court order, denying Bruenn's petition for re-hearing, contains no opinion. (App. 25a). The trial court failed to conduct an investigation into the juror misconduct and incompetence issue, which it had both an affirmative duty and authority to do when the jury foreperson delivered a note to the judge indicating that one of the jurors had difficulty participating in deliberations and had requested a translator. (App. 26a).

JURISDICTION

The California Supreme Court entered its *En Banc* order dismissing Petitioner Bruenn's appeal on October 19, 2005. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL PROVISIONS

The case involves the abridgement of Petitioner's constitutionally protected right to the complete consideration of his case by a fair, impartial and competent panel of jurors pursuant to the Seventh Amendment of the United States Constitution[2] and Article I, Section 16 of the California Constitution. The Seventh Amendment of the United States Constitution provides: "In suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." [3] Article I, Section 16 of the California Constitution provides in pertinent part: "Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. . . . in civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court." California Const., art. I, § 16. In essence, art. I, Section 16, of the California Constitution is a mirror image of the Seventh Amendment.

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[2] Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted." Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657 (1913); Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446-48 (1830).

The right was to "a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts and (except in acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence. Capital Traction Co. v. Hef, 174 U.S. 1, 13 (1899).

[3] The clause of the Amendment prohibiting the re-examination of any fact found by a jury is not restricted in its application to suits at common law tried before juries in courts of the United States. It applies equally to a case tried before a jury in a state court and brought to the Supreme Court on appeal. The Justices v. Murray, 76 U.S. (9 Wall.) 274, 278 (1870); Chicago, B. & Q. R.R. v. City of Chicago, 166 U.S. 226, 242-46 (1897).

The state court clouded the significance and meaning of the constitutional right to trial by a fair, impartial and competent jury by creating an exception to the rule on technical grounds. Bruenn was denied his constitutionally protected right, under both the U.S. Constitution and the California Constitution, to a fair and impartial jury when the trial court failed to investigate and replace a limited English-proficient juror who clearly could not perform his prescribed juror duties under California *Code of Civil Procedure* (hereinafter "C.C.P.") § 203(a)(6) because his limited English skills prevented him from participating in any meaningful manner in jury deliberations. The trial court's failure to investigate and hold a hearing on the matter of the incompetent juror was prejudicial, not harmless. The juror was demonstrably unable to perform his juror duties pursuant to relevant California statutory law, and was therefore "unqualified" to serve. The juror's continued presence in the deliberation room, noteworthy because he was unable to participate in any meaningful discussions or to articulate his analysis and viewpoint, clearly violated the intent of the Seventh Amendment of the U.S. Constitution and Article I, Section 16 of the California Constitution.

Additionally, this case involves the improper exclusion of relevant, admissible and material evidence from trial, in violation of California Evidence Code § 351,[4] thereby undermining Petitioner's ability to rebut the employer's non-discriminatory reason for termination and protracting Petitioner's opportunity to establish the existence of a hostile work environment and "pretextual" termination under FEHA.

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[4] Section 351 provides in pertinent part: "Except as otherwise provided by statute, all relevant evidence is admissible." Cal. Evid. Code § 351.